

By the Committees on Judiciary; and Banking and Insurance; and
Senator Richter

590-03775A-10

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1 A bill to be entitled
2 An act relating to trusts; creating s. 736.0902, F.S.;
3 limiting the duties and liability of certain trustees
4 with respect to contracts for life insurance; defining
5 the term "qualified person"; providing for the
6 application and nonapplication of certain provisions
7 of state law; requiring that notice of such provisions
8 be given under certain circumstances; providing
9 requirements for such notice; providing that such
10 provisions do not apply if a party notified of the
11 application of certain provisions of state law objects
12 in writing; creating a rebuttable presumption of
13 delivery of notice; defining the term "affiliate" for
14 specified purposes; providing that certain provisions
15 of state law do not apply under specified
16 circumstances; prohibiting the compensation of a
17 trustee for the performance of certain activities;
18 amending s. 518.112, F.S.; expanding the list of
19 delegable investment functions for certain
20 fiduciaries; revising requirements for the provision
21 of written notice by a trustee of an intent to begin
22 delegating investment functions; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 736.0902, Florida Statutes, is created
28 to read:

29 736.0902 Nonapplication of prudent investor rule.-

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30 (1) Notwithstanding the provisions of s. 518.11 or s.
31 736.0804, with respect to any contract for life insurance
32 acquired or retained on the life of a qualified person, a
33 trustee has no duty to:

34 (a) Determine whether the contract of life insurance is or
35 was procured or effected in compliance with s. 627.404;

36 (b) Determine whether any contract of life insurance is, or
37 remains, a proper investment;

38 (c) Investigate the financial strength of the life
39 insurance company;

40 (d) Determine whether to exercise any policy option
41 available under the contract for life insurance;

42 (e) Diversify any such contract for life insurance or the
43 assets of the trust with respect to the contract for life
44 insurance; or

45 (f) Inquire about or investigate the health or financial
46 condition of any insureds.

47 (2) For purposes of this section, a "qualified person" is a
48 person who is insured or a proposed insured, or the spouse of
49 that person, who has provided the trustee with the funds used to
50 acquire or pay premiums with respect to a policy of insurance on
51 the life of that person or the spouse of that person, or on the
52 lives of that person and the spouse of that person.

53 (3) The trustee is not liable to the beneficiaries of the
54 trust or any other person for any loss sustained with respect to
55 a contract for life insurance to which this section applies.

56 (4) Unless otherwise provided in the trust instrument,
57 paragraph (1)(a) applies to any contract for life insurance on
58 the life of a qualified person.

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59 (5) Unless otherwise provided in the trust instrument,
60 paragraphs (1) (b)-(f) apply if:

61 (a) The trust instrument, by reference to this section,
62 makes this section applicable to contracts for life insurance
63 held by the trust; or

64 (b) The trustee gives notice that this section applies to a
65 contract for life insurance held by the trust.

66 1. The notice of the application of this section shall be
67 given to the qualified beneficiaries and shall contain a copy or
68 restatement of this section.

69 2. Notice given pursuant to any of the provisions of part
70 III of this chapter to a person who represents the interests of
71 any of the persons set forth in subparagraph 1. shall be treated
72 as notice to the person so represented.

73 3. Notice shall be given in the manner provided in s.
74 736.0109.

75 4. If any person notified pursuant to this paragraph
76 delivers a written objection to the application of this section
77 to the trustee within 30 days after the date on which the
78 objector received such notice, paragraphs (1) (b)-(f) shall not
79 apply until the objection is withdrawn.

80 5. There shall exist a rebuttable presumption that any
81 notice sent by United States mail is received 3 days after
82 depositing the notice in the United States mail system with
83 proper postage prepaid.

84 (6) This section does not apply to any contract for life
85 insurance purchased from any affiliate of the trustee, or with
86 respect to which the trustee or any affiliate of the trustee
87 receives any commission unless the duties have been delegated to

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88 another person in accordance with s. 518.112. For purposes of
89 this subsection, an "affiliate" is any person who controls, is
90 controlled by, or is under common control with the trustee.

91 (7) Paragraph (1)(a) does not apply if the trustee applied
92 for or accepted ownership of a contract of life insurance and
93 the trustee had knowledge that:

94 (a) The benefits were not payable to a person specified in
95 s. 627.404 when the contract of life insurance was issued; or

96 (b) The contract of life insurance is or was purchased with
97 resources or guarantees directly or indirectly provided by a
98 person who, at the time of the inception of such contract, did
99 not have an insurable interest in the insured as defined by s.
100 627.404, and, at the time of the inception of such contract,
101 there is a verbal or written arrangement, agreement, or plan
102 with a third party to transfer ownership of the policy or policy
103 benefits in a manner that would be in violation of state law.

104 (8) A trustee who performs fiduciary or advisory services
105 related to a policy of life insurance to which subsection (1)
106 applies shall not be compensated for performing the applicable
107 service to which subsection (1) applies.

108 Section 2. Paragraph (b) of subsection (2) and paragraph
109 (b) of subsection (3) of section 518.112, Florida Statutes, are
110 amended to read:

111 518.112 Delegation of investment functions.—

112 (2)

113 (b) The delegable investment functions under this
114 subsection include:

115 1. A determination of whether the insurance contract was
116 procured or effected in compliance with s. 627.404;

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117 ~~2.1.~~ A determination of whether any insurance contract is
118 or remains a proper investment;

119 3. The investigation of the financial strength of the life
120 insurance company;

121 ~~4.2.~~ A determination of whether or not to exercise any
122 policy option available under any insurance ~~such~~ contracts;

123 ~~5.3.~~ A determination of whether or not to diversify such
124 contracts relative to one another or to other assets, if any,
125 administered by the fiduciary; or

126 ~~6.4.~~ An inquiry about changes in the health or financial
127 condition of the insured or insureds relative to any such
128 contract.

129 (3) A fiduciary may delegate investment functions to an
130 investment agent under subsection (1) or subsection (2), if:

131 (b) In the case of a trust or estate, the fiduciary has
132 given written notice, of its intention to begin delegating
133 investment functions under this section, to all beneficiaries,
134 or their legal representative, eligible to receive distributions
135 from the trust or estate within 30 days of the delegation unless
136 such notice is waived by the eligible beneficiaries entitled to
137 receive such notice. This notice shall thereafter, until or
138 unless the beneficiaries eligible to receive income from the
139 trust or distributions from the estate at the time are notified
140 to the contrary, authorize the trustee or legal representative
141 to delegate investment functions pursuant to this subsection.
142 This discretion to revoke the delegation does not imply under
143 subsection (2) any continuing obligation to review the agent's
144 actions.

145 1. Notice to beneficiaries eligible to receive

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146 distributions from the trust from the estate, or their legal
147 representatives shall be sufficient notice to all persons who
148 may join the eligible class of beneficiaries in the future.

149 2. Additionally, as used herein, legal representative
150 includes one described in s. 731.303, without any requirement of
151 a court order, an attorney-in-fact under a durable power of
152 attorney sufficient to grant such authority, a legally appointed
153 guardian, or equivalent under applicable law, any living,
154 natural guardian of a minor child, or a guardian ad litem.

155 3. Written notice shall be given as provided in part III of
156 chapter 731 as to an estate, and as provided in s. 736.0109 and
157 part III of chapter 736 as to a trust.÷

158 ~~a. By any form of mail or by any commercial delivery~~
159 ~~service, approved for service of process by the chief judge of~~
160 ~~the judicial circuit in which the trust has its principal place~~
161 ~~of business at the date of notice, requiring a signed receipt;~~

162 ~~b. As provided by law for service of process; or~~

163 ~~c. By an elisor as may be provided in the Florida Rules of~~
164 ~~Civil Procedure.~~

165
166 ~~Notice by mail or by approved commercial delivery service is~~
167 ~~complete on receipt of notice. Proof of notice must be by~~
168 ~~verified statement of the person mailing or sending notice, and~~
169 ~~there must be attached thereto the signed receipt or other~~
170 ~~satisfactory evidence that delivery was effected on the~~
171 ~~addressee or on the addressee's agent. Proof of notice must be~~
172 ~~maintained among the trustee's permanent records.~~

173 Section 3. This act shall take effect July 1, 2010.